

807 KAR 5:080. Procedural and filing requirements and safeguards concerning non-regulated activities of utilities or utility affiliates.

RELATES TO: KRS 278.010, 278.2201, 278.2203, 278.2205, 278.2207, 278.2213, 278.2215, 278.2219, 278.230, 278.260

STATUTORY AUTHORITY: KRS 278.040(3), 278.2201, 278.280(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.280(1) authorizes the commission to establish proper practices to be observed in regard to a utility's practices and services. KRS 278.2201 prohibits a utility governed by KRS 278.2201 through 278.2219 from subsidizing nonregulated activities performed by the utility or an affiliate and authorizes the commission to promulgate administrative regulations to implement this section. KRS 278.2205(3) requires a utility governed by KRS 278.2201 through 278.2219 to file with the commission a statement that its cost allocation manual has been prepared and adopted, together with the manual. KRS 278.2205(4) requires a utility governed by KRS 278.2201 through 278.2219 to amend its cost allocation manual to reflect any material changes. KRS 278.230 requires a utility to file with the commission any reports, schedules, classifications or other information that the commission reasonably requires. KRS 278.2207 prescribes requirements for transactions between a utility governed by KRS 278.2201 through 278.2219 and its affiliate, and provides for deviations from those requirements. KRS 278.2213(13) requires the commission to establish specifications for a disclaimer to be used by an affiliate using the name, trademark, brand or logo of a utility governed by KRS 278.2201 through 278.2219 and requires commission approval prior to the use of any disclaimer. KRS 278.2213(15) requires a utility governed by KRS 278.2201 through 278.2219 to inform the commission of any new nonregulated activity within the time specified by the commission. KRS 278.2213(17) authorizes the commission to require a utility to file annual reports relating to its transactions with affiliates. KRS 278.2219 authorizes the commission to grant a deviation from a provision of KRS 278.2201 through 278.2213. This administrative regulation prescribes procedures, filing requirements, and safeguards relating to nonregulated activities of a utility or a utility affiliate.

Section 1. Definitions. For purposes of this administrative regulation:

(1) "Affected utility" means a utility not exempted by KRS 278.2215, or other law, from a requirement of KRS 278.2201 through 278.2219.

(2) "Service agreement" means an agreement between an affected utility and an affiliate or subsidiary that delineates the activities, duties, pricing and accounting for transactions between the parties.

Section 2. Annual Reports Relating to a Nonregulated Activity of an Affected Utility or Its Affiliate. (1) An affected utility shall file with the commission, by March 31 of each calendar year, a report containing the following information:

(a) A description of each change in the affected utility's cost allocation manual during the preceding calendar year that has not been previously reported;

(b) A report on the utility's incidental nonregulated activity that describes the activity and provides justification for reporting the nonregulated activity as an incidental nonregulated activity, including:

1. Revenue per year or percentage of total revenue per year of the activity reported as an incidental nonregulated activity;

2. A calculation demonstrating the manner in which the affected utility has determined the

percentage of revenue set forth in subparagraph 1 of this paragraph;

3. A full explanation as to why the activity reported as an incidental nonregulated activity is reasonably related to the affected utility's regulated services; and

(c) A list of nonregulated affiliates and a brief description of the activities in which each affiliate is involved, except that an affected utility may meet the requirements of this paragraph for a nonregulated affiliate that has not, within the reporting period, offered or sold goods and services in the Commonwealth of Kentucky or entered into a transaction with an affected utility by stating the name of the nonregulated affiliate and the nature of its business.

(2) A copy of each service agreement existing on the effective date of KRS 278.2201 through 278.2219 and remaining in effect shall be filed as an attachment to the annual report required by this subsection. After the initial filing, an affected utility shall file only new or amended service agreements with the annual report.

Section 3. Filing of the Cost Allocation Manual and Amendments. (1) An affected utility shall file a copy of a new cost allocation manual or a new amendment to its cost allocation manual within:

(a) Sixty (60) days of a material change in matters required to be included in the cost allocation manual; or

(b) Ninety (90) days of engaging in a new nonregulated activity that is not classified as an incidental nonregulated activity pursuant to KRS 278.2203(4).

(2) If an affected utility files a new cost allocation manual or an amendment to a cost allocation manual, it shall include with its filing a cover letter containing a brief description of the activity or material change in circumstance that necessitates the filing of the cost allocation manual or amendment.

(3) An affected utility filing under this section shall include in its filing all documents and information required by 807 KAR 5:001, Section 14, except that only one (1) copy of the cost allocation manual shall be filed.

Section 4. Notice of Establishment of New Nonregulated Activity. (1) Within ten (10) days of establishing a new nonregulated activity, an affected utility shall file with the commission a written notice that:

(a) Briefly describes the new nonregulated activity; and

(b) States whether the new nonregulated activity is proposed to be classified as an incidental nonregulated activity.

(2) If a new nonregulated activity is proposed to be classified as an incidental nonregulated activity, an affected utility shall include in the notice required by subsection (1) of this section the information required by Section 2 (1)(b) of this administrative regulation.

Section 5. Petition for Deviation. (1) To request a deviation pursuant to KRS 278.2219, an affected utility shall file with the commission the following documents and information:

(a) All documents and information required by 807 KAR 5:001, Section 14;

(b) An original and five (5) copies of the petition;

(c) All documents and information required by KRS 278.2219;

(d) A full description of the reasons that compliance with the requirements from which deviation is sought is impractical or unreasonable.

(2) To request a deviation from KRS 278.2207, an affected utility shall file with the commission the following documents and information:

(a) All documents and information required by 807 KAR 5:001, Section 14;

(b) An original and five (5) copies of the petition;

- (c) All documents and information required by KRS 278.2219;
- (d) The proposed price of services or products proposed by the affected utility or nonregulated affiliate;
- (e) A detailed calculation demonstrating the manner in which the affected utility or nonregulated affiliate has determined the proposed price of services or products;
- (f) An explanation of the reasons the affected utility believes that the proposed price of services and products is in the public interest; and
- (g) A statement demonstrating good cause for the requested deviation.

Section 6. Disclaimer to be Employed When an Affiliate of an Affected Utility Uses the Utility's Name, Trademark, Brand, or Logo. The disclaimer used by an affiliate of an affected utility shall comply with the following requirements:

- (1) The disclaimer shall state that "(affiliate's name) is not the same company as (utility's name). (Affiliate's name) is not regulated by the Kentucky Public Service Commission. You do not have to buy (the affiliate's) (products or services, as applicable) in order to continue to receive quality regulated services from the utility.";
- (2) If an affiliate of an affected utility uses the utility's name, trademark, brand, or logo in a print format, the disclaimer shall appear in capital letters on the first page or at the first point where the utility's name, trademark, logo or brand appears;
- (3) If an affiliate of an affected utility uses the utility's name, trademark, brand, or logo in a televised format, the disclaimer shall appear at the first point at which the utility's name, trademark, logo, or brand appears; and
- (4) If an affiliate of an affected utility uses the utility's name in an audio format, the disclaimer shall be spoken at the close of the advertisement. (28 Ky.R. 204; 640; 1395; eff. 12-19-2001; TAm 1-30-2013; Crt eff. 3-27-2019.)